

<b>USDC SDNY</b> <b>DOCUMENT</b> <b>ELECTRONICALLY FILED</b> DOC #: DATE FILED: <u>7-31-13</u>
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
ANTHONY JOSEPH GRACE,	:	
	:	ORDER ADOPTING REPORT
Plaintiff,	:	AND RECOMMENDATION
	:	
-against-	:	11 Civ. 9162 (ALC) (MHD)
	:	
MICHAEL ASTRUE	:	
Commissioner of Social Security,	:	
Defendant.	:	
-----X	:	

ANDREW L. CARTER, JR., United States District Judge:

The plaintiff, Anthony Grace, brings this action pursuant to 42 U.S.C. § 405(g), seeking review of a determination by the Commissioner of the Social Security Administration denying his application for disability insurance benefits for alleged disabilities of depression, severe headaches and chronic lower back pain.

Each party moved for judgment on the pleadings, in accordance with Rule 12(c) of the Federal Rules of Civil Procedure. After reviewing the administrative record and the parties' submissions, Magistrate Judge Michael C. Dolinger issued a Report and Recommendation ("R & R") (Dkt. No. 25), recommending that the Court vacate the Commissioner's decision and remand the case for further development of the record. The Court adopts Judge Dolinger's R & R in its entirety.

#### STANDARD OF REVIEW

In reviewing a magistrate judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where a magistrate judge provides notice to the parties in a report and recommendation that any objections must be provided within a certain period, and no such objections are filed, the district court may adopt the report "as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law." Adams v. New York State Dep't of Educ., 855 F.Supp.2d 205, 206 (S.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b)). Put another way, "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings." Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985).

#### DISCUSSION

Here, Magistrate Judge Dolinger determined that the Administrative Law Judge ("ALJ") Lebron: (1) did not properly assess the severity of plaintiffs' psychological condition during the insured period (R & R at 38-41); (2) did not explain why he failed to give controlling weight to the opinion of Grace's treating physicians and gave undue weight to the opinion of consulting

doctors (Id. at 42-49, 50-53); (3) failed to explain the reasoning behind his residual capacity conclusions that Grace could perform sedentary work (Id. at 53-56); (4) discounted plaintiffs' credibility of disability and impact of alleged disability without adequate explanation (Id. at 56-62, 63-64); (5) did not require SSA to carry its burden of proof on available jobs (Id. at 62-63); and (6) failed to consider Grace's eligibility under a more appropriate age classification (younger individuals vs. individuals approaching advanced age) (Id. at 64-67).

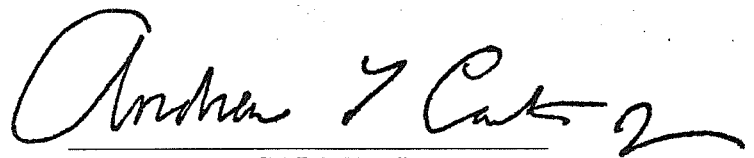
Judge Dolinger's Report also informed the parties of their right to object to his findings within 14 days of its date and warned that failure to file objections within 14 days will result in waiver of objections before the District Court and upon appeal. (R & R at 68-69). Judge Dolinger's Report and Recommendation was issued on May 21, 2013. As of the date of this order, neither Grace nor the Commissioner has filed any objections to the Report or requested an extension of time to file objections. Having reviewed the Report, to which no objection was made, the Court finds no clear error on the face of the record. Accordingly, the Court ADOPTS the Report in its entirety as the decision of the Court.

#### CONCLUSION

In accordance with Magistrate Judge Dolinger's R &R, the Commissioner's decision denying disability benefits to Plaintiff from November 15, 2008 to present is vacated, and this matter is remanded to the ALJ for further development of the record. The Clerk of Court is directed to close the motions at docket entry number 13 and 22 and to close the case.

SO ORDERED.

Dated: July 31, 2013  
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", with a stylized flourish at the end.

ANDREW L. CARTER, JR.  
United States District Judge